IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1072 OF 2004
IN
EXECUTION APPLICATION NO.453 OPF 2002
IN
CHAMBER SUMMONS NO.1393 OF 2001
IN
SUIT NO.1341 OF 1998

Jetu Jacques Taru Lalvani. ..Plaintiff.
Vs.
Shreeji Mineral Waters Pvt. Ltd. and ors.
..Defendants.
And
Ashok M. Parmar and ors. ..Respondents/
Guarantors.

Mr. N.K. Mudnaney for the Plaintiff.

Mrs. S.P. Trivedi i/by A. Bharat & Company for the Applicant.

CORAM : A.M. KHANWILKAR, J.
DATED : 19/7/2005.

P.C.:

1. Heard counsel for the parties. Perused the pleadings and documents on record.

2. According to the applicant, the premises in question are let out for residential use. Whereas, according to the plaintiff, the premises are for composite user namely residence and commercial. The

fact that the premises are used for commercial purpose is supported by the documents produced by the plaintiff in the additional paper book to which reference is made in the reply affidavit in the way of voucher issued on behalf of M/s. A.P. Investment, Proprietary concern of respondent No.1, the Profit and Loss Account submitted to the Income Tax Authorities disclosing the particulars of the disputed premises as used for carrying on activities of proprietary concern. In addition, reliance is placed on the bailiff report, which discloses that during the visit made by the bailiff, it was noticed that the name plate of A.P. Investment, Proprietary concern of respondent No.1 was displayed outside the disputed premises. Even accepting the argument canvased on behalf of the applicant that no attachment can be levied in respect of the residential premises in terms of Section 60 (kc) of the Code of Civil Procedure. However, if the premises are let out for composite user as is contended on behalf of the plaintiff, in such case, such protection is unavailable to the applicant. Whether the premises have been let out for composite use for residential cum commercial is put in issue and being disputed fact. It is a matter of evidence. Parties will have to adduce evidence to

establish the said position and only thereafter, it will be possible to decide the contentious issues raised in this application. S.O. 3-weeks to enable the applicant to file affidavits of his witnesses in lieu of examination in chief.

3. The objection regarding unreasonable delay in filing the present chamber summons will be considered at the time of hearing of the chamber summons.

. S.O. 9.8.2005.

(A.M. KHANWILKAR,J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1678 OF 2004
IN
EXECUTION APPLICATION NO.453 OF 2003
IN
CHAMBER SUMMONS NO.1393 OF 2001
IN
SUIT NO.1341 OF 1998

Jetu J. Taru Lalvani. ..Plaintiff.
Vs.
Shreeji Mineral Waters Pvt. Ltd. and ors.
..Defendants.
And
Ashok M. Parmar and ors.
..Respondent/Guarantoprs.
And
Smt.Sheela Ashok Parmar. ..Applicant.

Mr. N.K. Mudnaney for the Plaintiff.

Mrs. S.P. Trivedi i/by A. Bharat & Co. for the Applicant.

CORAM : A.M. KHANWILKAR, J.
DATED : 19/7/2005.

P.C.:

1. Heard counsel for the parties.

2. The plaintiff in execution of the decree against the respondent No.2 has caused attachment of household items lying in the premises being Room no.403, 4th floor, Shree Maroo Bhawan, New Hanuman Lane, Mumbai 400 002 being One Colour T.V. by Videocon Company, One Wooden Show Cause, One Tape Recorder, One Steel Cupboard of Aristo make, Two

Ceiling Fans with regulator, One wooden centre table with sunmica top, One refrigerator of Godrej Company, One Ghar Ghanti(flour mill) of Empire Company. The applicant is a wife of Judgment debtor -respondent No.1 Ashok Parmar. She has approached this court with specific case that all these items belonged to her as they were received by her from her parents and close relatives. It is asserted on affidavit that none of these items are owned or purchased by her husband Ashok Parmar. In support of her stand, reliance is placed on receipts and invoices in respect of T.V., Wooden show case, Steel cupboard and Refrigerator to indicate that the same were purchased in her name. Indeed, no receipt/invoices have been produced in respect of tape recorder, two ceiling fans, wooden centre table with sunmica top and Ghar ghanti (flour mill). It is stated on affidavit that, as the said items were gifted to the applicant by her parents and close relatives, no receipt/invoices are available. The plaintiff in the reply affidavit however, asserted that he made an attempt to ascertain the correctness of the statement made by the applicant in affidavit in support of the chamber summons. In that process, he sent letter to Shrinath Furniture Works on the given address which letter was however, returned

with remark not known. It is further stated that he himself visited building known as Gita Bhavan at 196, Kalbadevi road but could not trace any party known as Shrinath Furniture Works. On this basis, it is asserted that the documents produced by the applicant are false, bogus and forged documents. The stand taken on behalf of the plaintiff is short of saying that Shrinath Furniture Works never existed in the given premises prior to 1990. The bills/invoices produced by the applicant are pertaining to year 1989.90. If it is so, the correctness of the said document cannot be put in issue. Besides, the applicant has relied on invoices/receipts relating to Godrej Refrigerator and Colour T.V. which also purchased in the name of the applicant herein. There is nothing in the reply affidavit which would dispute the documents produced on record at the instance of the applicant. In my opinion, therefore, the applicant is justified in contending that the movable items which are attached on the assumption that they are owned by the Judgment debtor No.1, is improper. For, the said items are owned and belonged to the applicant herein. If it is so, the attachment order in respect of the movable items referred to above will have to be set aside as I already held that the said

items are belonged to the applicant and not the Judgment debtor-respondent No.1. The counsel for the plaintiff submits that whether the said items actually were purchased by the applicant will have to be decided by leading evidence. In my opinion, however, the documents produced on record by the applicant are sufficient to satisfy this court about the veracity of the stand taken by the applicant and the said material cannot be discarded for the nature of stand taken by the plaintiff referred to above. The chamber summons ought to succeed. The same is therefore, made absolute in terms of prayer clause (a) and (b). No order as to costs.

(A.M. KHANWILKAR,J.)